

2005 DRAFTING REQUEST

Bill

Received: **01/21/2005**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Kraus**

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Beverages**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Kraus, BB0456 -

Topic:

Three-tier distribution system; paperless intoxicating liquor wholesalers

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/1	agary 01/23/2005	jdyer 01/24/2005	pgreensl 01/24/2005	_____	sbasford 01/24/2005		State
/2	agary 01/25/2005	lkunkel 01/25/2005	jfrantze 01/25/2005	_____	lemery 01/25/2005		State
/3	agary 01/26/2005	lkunkel 01/26/2005	rschluet 01/26/2005	_____	lnorthro 01/26/2005		

FE Sent For:

<END>

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1/25
Pg 1
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/?	agary	1/24 jcd	1/24 P8	1/24 Pg 1/16			

FE Sent For:

<END>

2005-07 Budget Bill Statutory Language Drafting Request

- **Topic: Three-tier Distribution System**
- Tracking Code: BB0456
- SBO team: Tax and Justice
- SBO analyst: Jennifer Kraus
 - Phone: 266-2214
 - Email: jennifer.kraus@doa.state.wi.us
- **Agency acronym: DOR**
- **Agency number: 566**

1. Include statutory language changes aimed at protecting the 3-tier distribution system by limiting "paper wholesalers" which allow a direct relationship between retailers and manufacturers, thereby evading the actual wholesalers.

- Require all liquor shipments be unloaded in and distributed from a wholesaler's warehouse.
- Increase DOR permit fees to adequately fund DOR auditing and enforcement.
- Improve wholesaler permitting process
- Implement 3rd party complaint mechanism re: "paper" wholesalers.
- Require wholesaler to distribute to at least 10 unrelated retailers.
- Enhance DOR enforcement mechanisms and penalties.

See attached issue paper.

TO: Marc Marotta
Department of Administration

FROM: Eric Petersen
Wisconsin Wine & Spirits Institute

DATE: October ___, 2004

SUBJECT: 2005-07 Budget Provisions

Since the repeal of Prohibition in 1933, Wisconsin has relied on the three-tier system to distribute alcoholic beverages within the state in a responsible manner. This three-tier distribution system involves the sale of distilled spirits and wine from manufacturers (distillers, brewers, and vinters) to licensed wholesale distributors to retailers (taverns, restaurants, liquor and grocery stores). As the Wisconsin legislature declared in 1999: "a balanced and healthy 3-tier system for distributing intoxicating liquor is in the best interests of this state and its citizens" as it "ensures a level system between the manufacturer and wholesale tiers" and "provides an efficient and effective means for tax collection" 1999 Wisconsin Act 9.

In recent years, however, ambiguities in Wisconsin law have allowed market practices to develop that jeopardize the integrity of Wisconsin's three-tier system of alcohol regulation. Specifically, these statutory limitations create an environment where "paper wholesalers" could be established to facilitate direct relationships between retailers and manufacturers. As a direct result, the state's actual wholesalers can be evaded through the use of "paper wholesalers" that provide merely invoicing services. To address these ambiguities and strengthen the Wisconsin's three-tier distribution system, the Wisconsin Wine and Spirits Institute supports several modifications to state law to be included in the 2005-07 state budget:

- Adopt an "at rest" requirement for distribution of wine and spirits.
 - A statutory provision that would require all shipments of intoxicating liquor to a wholesaler be unloaded in and distributed from a wholesaler's warehouse.
- Coordinate and adequately fund (through increased permit fees) Department of Revenue's oversight of intoxicating liquors.
 - Permitting, auditing and enforcement of the three-tier distribution system would be coordinated within Department of Revenue.

- Coordinated efforts would be adequately and consistently funded with monies raised through increased permit fees on wholesalers and then credited to a specific segregated fund.
- Improve the wholesaler permitting process.
 - A statutory provision would establish minimum warehouse requirements and implement periodic site inspections.
 - All wholesaler applications would go beyond a simple paper review and be processed by staff at the Department of Revenue familiar with the regulation of intoxicating liquor and operation of Wisconsin's wholesalers.
- Implement a mechanism for third-party complaints in connection with the enforcement of state law protecting against "paper wholesalers."
 - A statutory provision would allow third-parties to file verified complaints with the Department of Revenue in connection with these provisions protecting against "paper wholesalers." Any complaint shall include the particular provision of law that is the basis of complaint as well as sufficient details to establish probable cause. An alleged violating wholesaler would then need to file a sworn response within 30 days of receiving the complaint. Within 60 days of receiving a response to the complaint, the Department of Revenue must dismiss the complaint (with a statement on findings), find a violation, or request an additional 60 days for investigation.
- Codify the existence of "indirect interests" and "effective control."
 - A statutory provision would require a wholesaler to distribute intoxicating liquor to at least ten unrelated retailers.
- Enhance enforcement mechanisms and penalties.
 - A statutory provision would create concurrent enforcement responsibility at the Department of Revenue and allow the Department to directly bring actions against alleged violators. Department of Revenue actions would all be brought in Dane County Circuit Court.
 - A statutory provision would allow for a private cause of action (by another wholesaler, retailer or representative trade association) upon inaction by the state on a "paper wholesaler" violation and provide for the award of attorney fees to a successful party.
 - A statutory provision would impose penalties on both the violating wholesaler and the retailer. Monetary penalties would be increased and, as an additional penalty both the violating wholesaler's and retailer's permits could be revoked. Upon a finding of an indirect interest, a wholesaler permit would be required to be revoked. Monetary

penalties would include an amount equal to any wholesaler and retailer profits earned in connection with the illegal activities.

The Wisconsin Wine and Spirits Institute is committed to assisting the state's regulators and ensuring that state law adequately protects the three-tier distribution system. To that end, please let us know if you have further questions or need additional information. This brief memorandum provides an overview of the issues and requested statutory modifications. We are available to work with the Department on this budget proposal and provide additional drafting instructions and specific details about each provision as may be needed.

MN221556_1.DOC

Gary, Aaron

From: Kraus, Jennifer - DOA
Sent: Friday, January 21, 2005 2:59 PM
To: Gary, Aaron
Cc: Lashore, Patricia M; Gates-Hendrix, Sherrie
Subject: RE: Additional drafting request

This one at least I can answer. Legal work performed currently by DOR attorneys would as of January 1, 2006 be performed by DOA attorneys in the new consolidated division (see draft 0955) on behalf of DOR.

As to your first set of more general questions:

- 1) we don't need to set permit fees in statute - if DOR has the current authority to set them - that's fine.
- 2) A separate appropriation is fine not a separate fund.
- 3) directing DOR to do rules for the internal stuff is fine.

I sent your more specific questions to DOR (Pat Lashore and Barb Brandt).....Jennifer

-----Original Message-----

From: Gary, Aaron [mailto:Aaron.Gary@legis.state.wi.us]
Sent: Friday, January 21, 2005 2:54 PM
To: Kraus, Jennifer - DOA
Cc: Miller, Steve; Tradewell, Becky
Subject: RE: Additional drafting request

Jennifer,

One more thing. With regard to item 9. in my list below, my supervisor just reminded me that, in this budget, there won't be any DOR attorneys to litigate on behalf of DOR? How do you want to reconcile these instructions with the movement of agency attorneys to DOA?

I'll need guidance on these issues before I can even start drafting. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

-----Original Message-----

From: Gary, Aaron
Sent: Friday, January 21, 2005 2:42 PM
To: Kraus, Jennifer - DOA
Cc: Miller, Steve; Tradewell, Becky
Subject: RE: Additional drafting request

Hi again,

I've looked over the instructions again, and I have additional follow up questions and comments:

4. With regard to bullet one, this is pretty straightforward. But is the "unloading" requirement also imposed if the wholesaler is entitled to hold an "up-stream" license or permit also, e.g., a brewer or a rectifier? Also, do you know if the problem here is really out-of-state manufacturers - if so, it might make more sense to address the problem through out-of-state shippers permits under s. 125.58 than through wholesalers permits under s. 125.54.

5. With regard to the first item under bullet two, I don't see how this could be drafted. This would be an internal matter for DOR, I believe. As for the second item under bullet two, as indicated below, the permit fees are not statutory and I will need more guidance. This is also something that can be done by DOR right now without statutory modification.

6. With regard to the first item of bullet three, what are the "minimum warehouse requirements"? How "periodic" are the site inspections? With regard the second item of bullet three, this would be more suitable for a rule - a draft could include a legislative directive or DOR could do it on its own without statutory modification.

7. With regard to bullet four, DOR has existing enforcement powers under s. 125.12 (5). DOR can already pursue administrative action, which may be subsequently reviewed in the courts, based upon information

provided by third-parties.

8. With regard to bullet five, under s. 125.69 (1) (c), manufacturers, with certain exceptions, cannot hold a direct or indirect interest in a wholesaler. With regard to the directed statutory change, do you want this to be basis for both revocation of a wholesalers permit and a precondition (based upon representation of future intent) of obtaining a wholesalers permit?

9. With regard to item one of bullet six, as stated above, DOR can bring administrative enforcement proceedings. DA's can bring court proceedings and DOR or DA's can ask DOJ to step in. With regard to item three of bullet six, the existing general penalty for ch. 125 violations is a fine (criminal penalty) of up to \$1000 and/or 90 days in jail. Would the "monetary penalty" of ill-gotten profits be in lieu of or in addition to this general penalty? Also, what does it mean that the penalty should be "increased" (increased to what?)

Thanks again for your assistance.

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

-----Original Message-----

From: Gary, Aaron
Sent: Friday, January 21, 2005 11:59 AM
To: Kraus, Jennifer - DOA
Subject: FW: Additional drafting request
Importance: High

Jennifer,

I am the drafter. The draft may not be too lengthy, but parts of the instructions are rather odd. I prefer not to have meetings, but would like somebody available to answer questions. I briefly looked over the materials last Friday, when it first came up. At the outset, I have a few questions and comments:

1. The statutes don't set DOR permit fees. DOR does this on its own. No statutory treatment is necessary for DOR to increase the fees or for DOR to expend more money for oversight. Do you want this draft to create an anomaly and actually set the fee for these permits by statute?

2. The instruction materials refer to crediting fees to a segregated fund. Do they really mean a segregated fund, like the transportation fund? Or do they only want a separate appropriation? As I understand it, all alcohol beverage activity for all of ch. 125 runs through only one appropriation. It would be odd to create a separate appropriation just for this purpose, and yet odder to create a segregated fund.

3. At least part of instructions relate to DOR internal procedure. This would seem to be more appropriate for rule-making than statutes. Is it OK to require rule-making for parts of the matters in the instructions?

I'm not sure how complicated this will be until I get into the draft. I cannot guarantee that it can be timely completed.

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

-----Original Message-----

From: Miller, Steve
Sent: Friday, January 21, 2005 11:42 AM
To: Gary, Aaron
Subject: FW: Additional drafting request
Importance: High

-----Original Message-----

From: Kraus, Jennifer - DOA
Sent: Friday, January 21, 2005 11:28 AM
To: Miller, Steve
Cc: Schmiedicke, David; Koskinen, John; Lashore, Patricia M; Merry-Mason, Monica; Nelson, Linda
Subject: RE: Additional drafting request
Importance: High

Steve - Sorry to tell you this but the Governor just reversed his position on this issue and does want this drafted for inclusion in the budget. Have the drafter call me with questions. - perhaps I can arrange a meeting with the drafter and DOR to facilitate answering questions. Sorry - Jennifer

<< File: Stat Lang - 3 tier distribution.doc >> << File: memo.pdf >>

From: Kraus, Jennifer - DOA
Sent: Wednesday, January 12, 2005 5:02 PM
To: Miller, Steve
Cc: Schmiedicke, David; Koskinen, John
Subject: Additional drafting request

Steve -We may need a draft prepared on the topic of the 3-tier distribution of liquor system. We will be briefing the Governor on it Thursday night. I can give the drafter a better sense of whether this is going forward or not then, but I wanted to make you aware of the possibility that we may need it. If we do, we can get DOR staff involved to provide more detailed drafting instructions. Call if you have questions.

Jennifer

<< File: Stat Lang - 3 tier distribution.doc >>

<< File: memo.pdf >>

Gary, Aaron

From: Kraus, Jennifer - DOA
Sent: Friday, January 21, 2005 4:50 PM
To: Gary, Aaron
Cc: Kreye, Joseph; Lashore, Patricia M
Subject: RE: Additional drafting request

Correct.

-----Original Message-----

From: Gary, Aaron [mailto:Aaron.Gary@legis.state.wi.us]
Sent: Friday, January 21, 2005 4:49 PM
To: Kraus, Jennifer - DOA
Cc: Kreye, Joseph; Lashore, Patricia M
Subject: RE: Additional drafting request

Jennifer,

I will talk to Joe. I think it is better not to roll these drafts together.

But I want to confirm: You now do not want a separate "wholesalers' permit" appropriation created for purposes set forth in the instructions, and you also do not want to earmark wholesalers' permit fees, correct? Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

-----Original Message-----

From: Kraus, Jennifer - DOA
Sent: Friday, January 21, 2005 4:39 PM
To: Gary, Aaron
Cc: Kreye, Joseph; Lashore, Patricia M
Subject: RE: Additional drafting request

Aaron - Turns out we are going to increase the administration of liquor tax from 3 cents to 11 cents as a way to pay for the enforcement of this instead of permits. There already is a draft (1820/p1) started that does this (although it only goes to 7 cents) - it converted existing alcohol and tobacco agents from GPR to PR. You can probably roll the two drafts together.

Jennifer

-----Original Message-----

From: Gary, Aaron [mailto:Aaron.Gary@legis.state.wi.us]
Sent: Friday, January 21, 2005 4:12 PM
To: Kraus, Jennifer - DOA
Subject: RE: Additional drafting request

Thanks. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
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aaron.gary@legis.state.wi.us

-----Original Message-----

From: Kraus, Jennifer - DOA
Sent: Friday, January 21, 2005 4:10 PM
To: Gary, Aaron

Subject: RE: Additional drafting request

We're hoping to get you some feedback yet today...

-----Original Message-----

From: Gary, Aaron [mailto:Aaron.Gary@legis.state.wi.us]
Sent: Friday, January 21, 2005 3:37 PM
To: Kraus, Jennifer - DOA
Subject: RE: Additional drafting request

Should I be expecting DOR to respond to the e-mail questions yet today or tomorrow?

Aaron R. Gary
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aaron.gary@legis.state.wi.us

-----Original Message-----

From: Kraus, Jennifer - DOA
Sent: Friday, January 21, 2005 3:19 PM
To: Gary, Aaron
Subject: FW: Additional drafting request
Importance: High

FYI - see DOR contact person for all but fees and appropriation issues....Jennifer

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From: Gates-Hendrix, Sherrie
Sent: Friday, January 21, 2005 3:06 PM
To: Brandt, Barbara K - DOR
Cc: Hardt, Diane L; Lashore, Patricia M; Kraus, Jennifer - DOA
Subject: FW: Additional drafting request
Importance: High

Barb -- Pat and I would prefer to have you respond directly to Jenny Kraus in DOA on this and copy us with your response. thanks

Pat -- Will you provide guidance on # 1 and # 5 below re permit fees and # 2 regarding the PR appropriation?

Jenny -- **some of the detail in the proposal is definitely appropriate for admin rule. If he wants to talk to someone about whether an individual item is appropriate for rule or not, Barb would be a good contact on that. Barb's number is 6-0286**

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Please review and send comments

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3. At least part of instructions relate to DOR internal procedure. This would seem to be more appropriate for rule-making than statutes. Is it OK to require rule-making for parts of the matters in the instructions?

I'm not sure how complicated this will be until I get into the draft. I cannot guarantee that it can be timely completed.

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

Gary, Aaron

From: Kraus, Jennifer - DOA
Sent: Friday, January 21, 2005 7:27 PM
To: Gary, Aaron
Subject: FW: Additional drafting request

sorry for the delay - had to go get my kids....

-----Original Message-----

From: Brandt, Barbara K - DOR
To: Gates-Hendrix, Sherrie
Cc: Hardt, Diane L; Lashore, Patricia M; Kraus, Jennifer - DOA
Sent: 1/21/2005 5:19 PM
Subject: RE: Additional drafting request

My best responses to your questions, pertinent to my area, without consulting my technical expert, are as follows:

4. I believe the Wisconsin Wine & Spirits Institute (Institute) is concerned about some large retailers that may try to by-pass legitimate WI wholesalers by setting up their own paper wholesalers to ship directly to their retail locations. I'm assuming their interest is liquor and not beer or fermented malt beverages. Per Sec. 125.55(2) a combination manufacturer's and wholesaler's permit may not be issued and Sec. 125.69(1)(c) prohibits a manufacturer from having an interest in a wholesaler. A wholesaler with an "up-stream" permit would be a rare.

6. We do not do periodic site inspections unless there is a complaint. I cannot speak for the Institute but assume one minimum warehouse requirement would be a physical location - in other words, a legitimate business operating from a location.

8. Yes, a basis for revocation and precondition.

9. A \$1000 fine and 90 days in jail is a fine for a misdemeanor. Possibly the Institute is requesting that this violation be a felony. Classification of felonies (A through I) and the related penalties are set forth in Sec. 939.50. I could suggest Class I felony which has the least severe penalty and seems appropriate if it is to become a felony. The fine is \$10,000 and/or imprisonment of 3 1/2 years or both. FYI - Some penalty sections of the statutes include the cost of prosecution as part of the penalty. See 71.83(2)(b)1.

Barbara K. Brandt, Chief
Criminal Investigation Section
Wisconsin Department of Revenue
2135 Rimrock Road, M/S 6-40
P.O. Box 8933
Madison, WI 53708-8933
Telephone: (608) 266-0286
Fax: (608) 261-6240
bbrandt@dor.state.wi.us <mailto:bbrandt@dor.state.wi.us>

>-----Original Message-----

>**From:** Gates-Hendrix, Sherrie
>**Sent:** Friday, January 21, 2005 3:06 PM
>**To:** Brandt, Barbara K - DOR
>**Cc:** Hardt, Diane L; Lashore, Patricia M; Kraus, Jennifer - DOA
>**Subject:** FW: Additional drafting request
>**Importance:** High

>

>Barb -- Pat and I would prefer to have you respond directly to Jenny
>Kraus in DOA on this and copy us with your response. thanks

>
>Pat -- Will you provide guidance on # 1 and # 5 below re permit fees
>and # 2 regarding the PR appropriation?
>
>Jenny -- some of the detail in the proposal is definitely appropriate
>for admin rule. If he wants to talk to someone about whether an
>individual item is appropriate for rule or not, Barb would be a good
>contact on that. Barb's number is 6-0286
>
>-----Original Message-----
>From: Kraus, Jennifer - DOA
>Sent: Friday, January 21, 2005 2:53 PM
>To: Gates-Hendrix, Sherrie; Lashore, Patricia M
>Subject: FW: Additional drafting request
>Importance: High
>
>Please review and send comments
>
> -----Original Message-----
>From: Gary, Aaron [mailto:Aaron.Gary@legis.state.wi.us]
>Sent: Friday, January 21, 2005 2:42 PM
>To: Kraus, Jennifer - DOA
>Cc: Miller, Steve; Tradewell, Becky
>Subject: RE: Additional drafting request
>
>Hi again,
> I've looked over the instructions again, and I have additional
>follow up questions and comments:
> 4. With regard to bullet one, this is pretty straightforward.
>But is the "unloading" requirement also imposed if the wholesaler is
>entitled to hold an "up-stream" license or permit also, e.g., a brewer
>or a rectifier? Also, do you know if the problem here is really
>out-of-state manufacturers - if so, it might make more sense to address
>the problem through out-of-state shippers permits under s. 125.58 than
>through wholesalers permits under s. 125.54.
> 5. With regard to the first item under bullet two, I don't see
>how this could be drafted. This would be an internal matter for DOR, I
>believe. As for the second item under bullet two, as indicated below,
>the permit fees are not statutory and I will need more guidance. This
>is also something that can be done by DOR right now without statutory
>modification.
> 6. With regard to the first item of bullet three, what are the
>"minimum warehouse requirements"? How "periodic" are the site
>inspections? With regard the second item of bullet three, this would
>be more suitable for a rule - a draft could include a legislative
>directive or DOR could do it on its own without statutory modification.
> 7. With regard to bullet four, DOR has existing enforcement
>powers under s. 125.12 (5). DOR can already pursue administrative
>action, which may be subsequently reviewed in the courts, based upon
>information provided by third-parties.
> 8. With regard to bullet five, under s. 125.69 (1) (c),
>manufacturers, with certain exceptions, cannot hold a direct or
>indirect interest in a wholesaler. With regard to the directed
>statutory change, do you want this to be basis for both revocation of a
>wholesalers permit and a precondition (based upon representation of
>future intent) of obtaining a wholesalers permit?
> 9. With regard to item one of bullet six, as stated above, DOR
>can bring administrative enforcement proceedings. DA's can bring court
>proceedings and DOR or DA's can ask DOJ to step in. With regard to
>item three of bullet six, the existing general penalty for ch. 125
>violations is a fine (criminal penalty) of up to \$1000 and/or 90 days
>in jail. Would the "monetary penalty" of ill-gotten profits be in lieu
>of or in addition to this general penalty? Also, what does it mean
>that the penalty should be "increased" (increased to what?)
> Thanks again for your assistance.
>
>
>Aaron R. Gary

>Legislative Attorney
>Legislative Reference Bureau
>608.261.6926 (voice)
>608.264.6948 (fax)
>aaron.gary@legis.state.wi.us

>
>-----Original Message-----
>From: Gary, Aaron
>Sent: Friday, January 21, 2005 11:59 AM
>To: Kraus, Jennifer - DOA
>Subject: FW: Additional drafting request
>Importance: High

>Jennifer,
>I am the drafter. The draft may not be too lengthy, but
>parts of the instructions are rather odd. I prefer not to have
>meetings, but would like somebody available to answer questions. I
>briefly looked over the materials last Friday, when it first came up.
>At the outset, I have a few questions and comments:
>1. The statutes don't set DOR permit fees. DOR does
>this on its own. No statutory treatment is necessary for DOR to
>increase the fees or for DOR to expend more money for oversight. Do
>you want this draft to create an anomaly and actually set the fee for
>these permits by statute?
>2. The instruction materials refer to crediting fees to
>a segregated fund. Do they really mean a segregated fund, like the
>transportation fund? Or do they only want a separate appropriation?
>As I understand it, all alcohol beverage activity for all of ch. 125
>runs through only one appropriation. It would be odd to create a
>separate appropriation just for this purpose, and yet odder to create a
>segregated fund.
>3. At least part of instructions relate to DOR internal
>procedure. This would seem to be more appropriate for rule-making than
>statutes. Is it OK to require rule-making for parts of the matters in
>the instructions?
>I'm not sure how complicated this will be until I get
>into the draft. I cannot guarantee that it can be timely completed.

>Aaron R. Gary
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>aaron.gary@legis.state.wi.us
>
>

DOA:.....Kraus, BB0456 - Three-tier distribution system; paperless intoxicating liquor wholesalers

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

LPS - please
check auto
refs

D-note

don't gen

1

AN ACT ...; relating to: the budget

Analysis by the Legislative Reference Bureau

COMMERCE AND ECONOMIC DEVELOPMENT

COMMERCE

and Under current law, alcohol beverages are generally distributed to consumers under a three-tier distribution system: the manufacturer may sell only to a wholesaler or rectifier; the wholesaler or rectifier may sell only to a wholesaler or to a retailer; the retailer may sell only to the consumer. With specific exceptions, no person may sell outside the three-tier system. DOR issues intoxicating liquor wholesalers' permits authorizing the sale of intoxicating liquor (wine and distilled spirits) at wholesale from the premises described in the permit to intoxicating liquor retailers and to other wholesalers. With limited exceptions, a manufacturer may not hold any direct or indirect interest in a wholesaler and a manufacturer or wholesaler may not hold any direct or indirect interest in a retailer.

Under this bill, any intoxicating liquor sold by a wholesaler must be physically unloaded at the wholesaler's premises prior to being delivered to a retailer or to another wholesaler, and the wholesaler's premises must be capable of warehousing intoxicating liquor. Also, a wholesaler must annually sell and deliver intoxicating liquor to at least ten retailers that do not have any direct or indirect common ownership interest with each other or with the wholesaler. If a wholesaler violates

these requirements, in addition to the current penalty of a fine of up to \$1,000 or imprisonment for not more than 90 days or both, a court may order that the wholesaler forfeit profits gained from the violation and that the wholesaler's permit be revoked. A retailer that receives a benefit from a wholesaler violation, with knowledge of the circumstances giving rise to the violation, is subject to similar penalties. The bill also requires DOR to promulgate rules related to enforcement of these requirements.

Under current law, DOR may suspend or revoke any alcohol beverages permit issued by DOR for violating any legal requirement. This bill creates a new, similar mechanism that applies specifically to suspension or revocation of wholesaler's permits based upon written allegations, including allegations of third parties, without a hearing.

Under current law, upon request by the secretary of revenue, the attorney general may represent this state or assist a district attorney in prosecuting any alcohol beverages violation, but DOR is not authorized to prosecute such violations. This bill authorizes DOR or, effective January 1, 2006, DOA's division of legal services, to prosecute violations of the wholesaler requirements created by the bill. The bill also creates a private cause of action on behalf of wholesalers, retailers, and trade associations allowing them to prosecute violations of the wholesaler requirements created by the bill if a complaint is made to DOR and DOR fails to timely render a decision on the complaint.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 125.12 (6) of the statutes is created to read:

2 125.12 (6) **REVOCATION OR SUSPENSION OF INTOXICATING LIQUOR WHOLESALERS'**
3 **PERMITS FOR CERTAIN VIOLATIONS.** (a) Any person may file a sworn written complaint
4 with the department alleging that an intoxicating liquor wholesaler has violated s.
5 125.54 (7) (a). The complaint shall identify the specific legal basis for the complaint
6 and sufficient facts for the department to determine whether there is cause to find
7 that a violation has occurred. The department shall provide a copy of the complaint
8 to any wholesaler against whom allegations are made, along with notice of the time
9 period under par. (b) to show cause why the wholesaler's permit should not be
10 revoked or suspended.

1 (b) Within 30 days of receiving a copy of the complaint under par. (a), any
2 wholesaler against whom allegations are made may file a sworn written response.

3 (c) Subject to par. (d), within 60 days of receiving any response under par. (b)
4 or, if no response is made, within 60 days of the date ^{on which} a response is due under par. (b),
5 the department shall make a written decision as to whether a violation has occurred
6 and either dismiss the complaint or take action under par. (e). Any decision under
7 this paragraph shall include findings of fact and conclusions of law and shall state
8 all reasons for the decision. The department shall provide a copy of the decision to
9 the complainant and to any wholesaler against whom allegations are made.

10 (d) Within 60 days of receiving any response under par. (b) or, if no response
11 is made, within 60 days of the date ^{on which} a response is due under par. (b), the department
12 may extend the time period for making a decision under par. (c) by an additional 60
13 days if the department provides notice within the time period specified in par. (c) that
14 an additional 60 days is necessary for investigation.

15 (e) If the department finds the allegations true and sufficient, the department
16 shall either suspend for not less than 10 days nor more than 90 days or revoke the
17 wholesaler's permit, and give notice of the suspension or revocation to the
18 wholesaler.

19 (f) A revocation or suspension under this subsection is a contested case under
20 ch. 227.

21 **SECTION 2.** 125.145 of the statutes is amended to read:

22 **125.145 Prosecutions by attorney general or department.** Upon request
23 by the secretary of revenue, the attorney general may represent this state or assist
24 a district attorney in prosecuting any case arising under this chapter. The

1 department may represent this state in prosecuting any violation of s. 125.54 (7) (a)
2 or (b) and shall bring any such action in the circuit court for Dane County.

3 History: 1985 a. 302.

SECTION 3. 125.145 of the statutes, as affected by 2005 Wisconsin Act (this

4 ~~Act~~), is amended to read:

5 **125.145 Prosecutions by attorney general or department of**
6 **administration.** Upon request by the secretary of revenue, the attorney general
7 may represent this state or assist a district attorney in prosecuting any case arising
8 under this chapter. The department of administration, division of legal services, may
9 represent this state in prosecuting any violation of s. 125.54 (7) (a) or (b) and shall
10 bring any such action in the circuit court for Dane County.

11 SECTION 4. 125.15 of the statutes is created to read:

12 **125.15 Actions against intoxicating liquor wholesalers.** If any
13 intoxicating liquor wholesaler, intoxicating liquor retail licensee or permittee, or
14 intoxicating liquor trade association makes a written complaint to the department
15 under s. 125.12 (6) of a violation of s. 125.54 (7) (a), and the department has not
16 rendered a decision within the time periods specified in s. 125.12 (6) (c) and (d), the
17 complaining party may bring an action to enforce the provisions of s. 125.54 (7) and
18 shall be entitled to recover reasonable attorney fees if found to be the prevailing
19 party.

20 SECTION 5. 125.54 (7) of the statutes is created to read:

21 **125.54 (7) BONA FIDE WHOLESALERS.** (a) 1. The premises described in a permit
22 issued under this section shall be capable of warehousing intoxicating liquor. Any
23 intoxicating liquor sold by the permittee shall be physically unloaded at the premises

1 described in the permit prior to being delivered to a retail licensee or permittee or to
2 another wholesaler.

3 2. A permittee under this section[✓] shall annually sell and deliver intoxicating
4 liquor to at least 10[✓] retail licensees or permittees that do not have any direct or
5 indirect common ownership interest with each other or with the permittee under this
6 section. The department shall not issue a permit under this section unless the
7 applicant represents to the department an intention to satisfy this requirement, and
8 shall not renew a permit issued under this section unless the permittee
9 demonstrates that this requirement has been satisfied.

10 (b) No intoxicating liquor retail licensee or permittee may receive a benefit from
11 a violation under par. (a)[✓] with knowledge of the circumstances giving rise to the
12 violation.

13 (c) 1. In addition to imposing any penalty provided under s. 125.11,[✓] a court may
14 order a wholesaler who violates this subsection[✓] to forfeit an amount equal to any
15 profit gained by the wholesaler or by a retail licensee or permittee that violates par.
16 (b)[✓], or by both, resulting from the violation, and the court may further order that the
17 wholesaler's permit be revoked except that, if the wholesaler violates par.[✓] (a) 2., the
18 permit shall be revoked.

19 2. In addition to imposing any penalty provided under s. 125.11, a court may
20 order a retail licensee or permittee who violates this subsection to forfeit an amount
21 equal to any profit gained by the retail licensee or permittee resulting from the
22 violation, and the court may further order that the retail license or permit be
23 revoked.

3. This paragraph shall not affect the authority of any municipality or the department to revoke, suspend, or refuse to renew or issue a license or permit under s. 125.12.

(d) The department shall promulgate rules to administer and enforce the requirements under this subsection. The rules shall ensure coordination between the department's issuance and renewal of permits under this section and its enforcement of the requirements of this subsection, and shall require that all applications for issuance or renewal of permits under this section be processed by department personnel generally familiar with activities of intoxicating liquor wholesalers. The department shall establish by rule minimum requirements for warehouse facilities on premises described in permits issued under this section and for periodic site inspections by the department of such warehouse facilities.

SECTION 6. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The amendment of section 125.145 (by SECTION 3) of the statutes takes effect on January 1, 2006.

(END)

1-1/2

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1827/1dn

ARG:.....

Jld

ATTN: Jennifer Kraus

Please review the attached draft carefully to ensure that it is consistent with your intent. ✓ Some information that I had requested was not provided prior to the time that drafting had to be completed. To complete the draft and make it workable, I had to make certain assumptions with respect to the drafting instructions, which assumptions may not be consistent with your expectations.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1827/1dn
ARG:jld:pg

January 24, 2005

ATTN: Jennifer Kraus

Please review the attached draft carefully to ensure that it is consistent with your intent. Some information that I had requested was not provided prior to the time that drafting had to be completed. To complete the draft and make it workable, I had to make certain assumptions with respect to the drafting instructions, which assumptions may not be consistent with your expectations.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

Gary, Aaron

From: Kraus, Jennifer - DOA
Sent: Tuesday, January 25, 2005 1:30 PM
To: Gary, Aaron
Cc: Gates-Hendrix, Sherrie; Lashore, Patricia M
Subject: RE: LRB Draft: 05-1827/1 Three-tier distribution system; paperless intoxicating liquor wholesalers

Just make the changes in #3...

-----Original Message-----

From: Gary, Aaron [mailto:Aaron.Gary@legis.state.wi.us]
Sent: Monday, January 24, 2005 4:22 PM
To: Kraus, Jennifer - DOA
Subject: RE: LRB Draft: 05-1827/1 Three-tier distribution system; paperless intoxicating liquor wholesalers

Hi Jennifer,

Quick response:

1. There are due process issues here, however it is unclear how serious a due process challenge could be mounted on the administrative decision when judicial review is available to the wholesaler. To provide for full-blown hearing rights will increase the cost to the state. I don't believe the bill provides for appeal rights to a "complaining" party, only to a wholesaler who has the permit suspended or revoked.

2. The quoted language ("premises described") is derived from DOR comments received late Friday, saying they don't know what minimum warehouse requirements would be but guess they at least would include a physical location, and this feeds into the rule-making requirement on p. 6 lines 7-8 of the draft re minimum warehouse facilities. Because nobody could get me details in time for drafting, my only option was to push the issue into rule-making. The rule-making in the attached draft allows DOR control in developing the pertinent standards, which I would have thought would be better for DOR than the converse; DOR can work with industry in developing these standards, and the final product does have to go through legislative review.

3. Deleting "common ownership" is fine with me; I think that, if this is done, "with" on the same line should be changed to "in".

Do you want any changes made to the draft? Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

-----Original Message-----

From: Kraus, Jennifer - DOA
Sent: Monday, January 24, 2005 3:39 PM
To: Gary, Aaron
Cc: Lashore, Patricia M
Subject: FW: LRB Draft: 05-1827/1 Three-tier distribution system; paperless intoxicating liquor wholesalers

Aaron - comments from DOR -- Jenny

-----Original Message-----

From: Gates-Hendrix, Sherrie
Sent: Monday, January 24, 2005 3:31 PM
To: Kraus, Jennifer - DOA

Cc: Lashore, Patricia M; Brennan, Audra D; Brandt, Barbara K - DOR;
Johnson, Roger B
Subject: RE: LRB Draft: 05-1827/1 Three-tier distribution system;
paperless intoxicating liquor wholesalers

Jenny -- here are our comments on the liquor wholesaler proposal draft:

- SECTION 1 - "Due process" concerns under the proposed 125.12(6): suggest language similar to 125.12(2)(a), and (b) so that the permittee has the opportunity to appear, produce witnesses, be represented by counsel, cross examine witnesses, etc. Secy Morgan would like to make it clear that the complaining wholesaler does not have the right to appeal DOR's decision. He would like to extend circuit court appeal rights to the permittee if DOR rules against them.

- SECTION 5 - "premises described shall be capable of warehousing liquor." We don't know what this entails so it will have to be done in admin rule. We're not aware of what the industry is thinking in this area. It would be much easier if this were established in law than for DOR to produce rules.

- SECTION 5, page 5, line 3 - delete "common ownership" from the words describing "any direct or indirect interest", as we have W.A.C. 8.87(3) and (4) in place describing examples of direct and indirect interests.

Sherrie Gates-Hendrix
DOR Legislative Liaison
<http://www.dor.state.wi.us>
(*) phone: (608) 267-1262
(*) fax: (608) 266-5718

-----Original Message-----

From: Lashore, Patricia M
Sent: Monday, January 24, 2005 12:06 PM
To: Brandt, Barbara K - DOR; Johnson, Roger B
Cc: Hardt, Diane L; Gates-Hendrix, Sherrie; Brennan, Audra D
Subject: FW: LRB Draft: 05-1827/1 Three-tier distribution system;
paperless intoxicating liquor wholesalers

Please note that all comments on this draft must be sent to me by 3:30 p.m. TODAY!!

-----Original Message-----

From: Kraus, Jennifer - DOA
Sent: Monday, January 24, 2005 12:01 PM
To: Lashore, Patricia M
Cc: Koskinen, John
Subject: FW: LRB Draft: 05-1827/1 Three-tier distribution system;
paperless intoxicating liquor wholesalers

Please forward to people for their review. We need to have comments back by end of the day today. Thanks - Jenny

-----Original Message-----

From: Greenslet, Patty [<mailto:Patty.Greenslet@legis.state.wi.us>]
Sent: Monday, January 24, 2005 11:57 AM
To: Kraus, Jennifer - DOA
Cc: Hanaman, Cathlene; Haugen, Caroline; Merry-Mason, Monica
Subject: LRB Draft: 05-1827/1 Three-tier distribution system; paperless
intoxicating liquor wholesalers

Following is the PDF version of draft 05-1827/1.